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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 19 ___

No. 683

WATERMAN STEAMSHIP CORPORATION,
Petitioner,

versus

SAMUEL W. ODOM,
Respondent,

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

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INDEX

	Page
Opinions Below	2
Jurisdiction	2
Questions Presented	2
Statutes Involved	2
Statement	2
Reasons For Refusing the Writ	2
Conclusion	5
Proof of Service	5

CITATIONS

CASES:

Flowers v. Savannah Machine and Foundry Co., Fifth Circuit, 1962, 310 F.2nd 135 (CA5) . . . 3

McAllister v. Magnolia Petroleum Co., 357 U.S. 221 (1958) . . . 3

STATUTES:

45 U.S.C. §56 . . . 3

46 U.S.C. §688 . . . 3

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR RESPONDENT IN OPPOSITION

Respondent, SAMUEL W. ODOM, respectfully submits his brief in opposition to Petitioner's Writ of Certiorari seeking review by this Court of a judgment of the United States Court of Appeals for the Fifth Circuit, reversing a decree in Admiralty rend-

ered by the United States District Court for the Southern District of Alabama in Petitioner's favor.

Respondent is satisfied with the presentation of OPINIONS BELOW, JURISDICTION, QUESTIONS PRESENTED, and STATUTES INVOLVED, as set forth in the Petition of Waterman Steamship Corporation, Petitioner.

STATEMENT

Respondent concurs in the statement of the case as set forth in the Petition of Petitioner for Writ of Certitorari and makes no additions thereto or corrections thereof.

REASONS FOR REFUSING THE WRIT

The issue in the present case is of such limited breadth that it falls far short of meriting review by this Court on certiorari. it concerns only the question of what limitation statute shall be used by a court of admiralty as a rule of thumb in deciding the presence or absence of prejudice and inexcusable delay so as to determine whether a particular maritime claim is or is not barred by laches.

The decision of the Court of Appeals is clearly correct. Further, there is no conflict upon the decision presented in this case nor does it present any important question of Federal law requiring consideration and decision by this Court.

1. The decision below is clearly correct.

The Court of Appeals' ruling in the instant case rests upon the case of *Flowers v. Savannah Machine and Foundry Co.*, Fifth Circuit, 1962, 310 F.2d 135 (CA5). In the *Flowers* case, as in the instant case, the Court of Appeals for the Fifth Circuit held that in determining the question of laches in an admiralty action by a shore-based worker for maritime injuries, the most appropriate statute of limitations to be used is the three year statute of limitations of the Jones Act (46 U.S.C. §688, which incorporates 45 U.S.C. §56).

The Court of Appeals in the *Flowers* case found that the application by District courts of local limitation statutes as guides had in the past led to great confusion, noting that within the Fifth Circuit, for instance, such local limitations might range from one to six years. Further, recognizing that the claim concerned was a federally-created right, it arrived at the conclusion that the uniform application of the same three year limitation set forth in the Jones Act, supra, was clearly more appropriate and sensible than the irregular results flowing from reference to varying local statutes of limitation. This analogy of the Jones Act three year period is, of course, a singularly appropriate one since the claim of the shore-based worker is itself analogously derived from the rights of a seaman under the Jones Act.

In arriving at this decision, the Court of Appeals referred to the holding of this Court in *McAllister v. Magnolia Petroleum Co.*, 357 U.S. 221 (1958) wherein this Court held in the case of a Jones Act

claim that the application of a state statute of limitations shorter than the three year Federal statute to a claim for unseaworthiness joined with a claim for negligence would deny the claimant the full benefit of the Federal law.

The holding in the *Flowers'* case, supra, and the instant case, that since a seaman is entitled to a three year statute of limitations under his warranty of seaworthiness, it is simply anomalous to hold that a person doing seaman's work, a "Sieracki" seaman, and making a similar claim is not, provides a uniform, workable, and sensible standard, that minimizes the confusion which has ensued from reference to state statutes of limitations.

2. There is no conflict of decision.

The Petitioner asserts that the instant case and the *Flowers'* case are in conflict with all of the Circuit Courts of Appeal and the decisions of this Court. We submit that this assertion is euphemistic. Indeed, no Court of Appeals other than the Fifth Circuit Court of Appeals has ever considered the appropriateness of applying by analogy the Jones Act three year period; in short, the question has never been raised. While a number of Courts of Appeal have referred to the local statutes of limitations to use as a rule of thumb in this determination, this has been in the absence of a suggestion of a better rule, not in spite of the better rule as set forth in the *Flowers'* case and the instant case. We submit that this is not a conflict such as has traditionally been held to warrant review by this Court on certiorari.

3. There is no important question of Federal law.

The issue in this case concerns only whether it is more appropriate to use as a rule of thumb one uniform Federal limitation period, the Jones Act, supra, or several varying local limitations in order to presume the absence or the presence of the elements (prejudice and inexcusable delay) which constitute laches. It is not such a question as should merit review by this Court.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a Writ of Certiorari should be denied.

Respectfully submitted,

Michael J. Salmon

MICHAEL J. SALMON
Counsel for the Respondent

PROOF OF SERVICE

I, MICHAEL J. SALMON, the attorney for the Respondent herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 24th day of February, 1964, I served a

copy of the foregoing brief for Respondent in Opposition on Waterman Steamship Corporation, Petitioner herein, by mailing a copy of the same in a duly addressed envelope, with first class postage prepaid, to the Honorable T. K. Jackson, attorney for the Petitioner, at his office address, 1101 Merchants National Bank Building, Mobile, Alabama.

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